UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

East Tennessee Natural Gas Company	Docket Nos. RP00-469-007 RP00-469-008 RP00-469-009 RP01-22-009 RP01-22-010 RP01-22-011 RP03-177-004 RP03-177-005 RP03-177-006

ORDER ON REHEARING AND COMPLIANCE FILINGS

(Issued November 4, 2004)

1. This order addresses several filings by East Tennessee Natural Gas Company (East Tennessee) concerning its compliance with Order No. 637. First, this order rejects East Tennessee's December 15, 2003 filing (December 15 filing) to revise its segmentation tariff provisions in light of the November 21, 2003 initiation of service on its Patriot Project expansion, as required by the Commission's January 30, 2002 (January 2002 Order)[1] and May 23, 2003 (May 2003 Order) [2] orders in this proceeding. This order also addresses East Tennessee's request for clarification or rehearing of the Commission's February 18, 2004 Order in these proceedings (February 2004 Order)[3] and East Tennessee's March 2, 2004 filing of revised tariff

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[1] *East Tennessee Natural Gas Co.*, 98 FERC ¶ 61,060 (2002).

[2] *East Tennessee Natural Gas Co.*, 103 FERC **&** 61,237 (2003).

[3] *East Tennessee Natural Gas Co.*, 106 FERC **&** 61,162 (2004).

sheets[4] to comply with the February 2004 Order. As more fully explained below, the request for clarification is granted and the revised tariff sheets in the March 2, 2004 filing are accepted subject to the conditions of this order. This order benefits customers by enhancing pipeline transportation services consistent with the Commission's policies in Order No. 637.

Background

2. East Tennessee operates a natural gas pipeline system that extends from Tennessee to Virginia. The portion of the pipeline in Tennessee consists of two parallel lines, the 3100 Line and the 3200 Line, that originate in Greenbrier and Lobelville, in western Tennessee, respectively, and converge into a single line, the 3300 Line, near Knoxville, in eastern Tennessee. There are interconnections with Tennessee Gas Pipeline Company (Tennessee), Columbia Gulf Transmission Company (Columbia Gulf), and Texas Eastern Transmission Corporation (Texas Eastern) near the western ends of both the 3100 and 3200 Lines. The 3300 Line extends northeast from Knoxville to East Tennessee’s terminus near Roanoke, Virginia. East Tennessee’s system also includes three lateral lines. The 3500 Line extends from Chattanooga on the 3200 Line south to an interconnect with Atlanta Gas Light Company in Georgia. The 3400 Line extends from the 3300 Line northwest to Nora, Virginia. Finally, the 3600 Line, constructed as part of the Patriot Project expansion, extends approximately 93 miles from the 3300 Line at Wytheville, Virginia, south to an interconnection with the facilities of Transcontinental Gas Pipe Line Corporation (Transco) at Eden, North Carolina. The Patriot Project also includes looping and compression on the 3300 Line to expand the capacity of that line. East Tennessee placed the Patriot Project expansion into service on November 21, 2003. East Tennessee's system-owned storage is the liquefied natural gas (LNG) storage facility near Kingsport, Tennessee. East Tennessee also connects to underground storage fields owned and operated by third parties and to various small production areas, such as Nora, located in southeast Virginia and eastern Tennessee.

3. On January 30, 2002, the Commission conditionally approved a settlement filed by East Tennessee to resolve its compliance with Order Nos. 637, 587-G, and 587-L. In the January 2002 Order, the Commission conditionally accepted tariff provisions providing for shippers to segment their capacity upstream of the Dixon Springs and Lewisburg compressor stations on the 3100 and 3200 Lines in central Tennessee, but not permitting segmentation anywhere else on East Tennessee’s system. The portion of East Tennessee’s system on which segmentation was

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[4] The revised tariff sheets are: Second Sub Eighth Revised Sheet No. 9, Second Sub Fifth Revised Sheet No. 52C, Second Sub Fourth Revised Sheet No. 129B, Second Sub Fourth Revised Sheet No. 130, and Second Sub Ninth Revised Sheet No. 176 to East Tennessee’s FERC Gas Tariff Second Revised Volume No. 1.

permitted included its interconnections with Columbia Gulf, Tennessee, and Texas Eastern. The Commission noted that, while East Tennessee then had several future system expansions planned, including the Patriot Project, its current system configuration lacked significant interconnection points that could present segmentation opportunities downstream of the Dixon Springs and Lewisburg compressor stations. However, the Commission further noted that it might become operationally feasible for East Tennessee to offer segmentation in the future because of the various system expansion projects then being contemplated, citing the Patriot Project expansion in Docket No. CP01-415-000. The Commission, therefore, in light of the future expansion of East Tennessee's system, required East Tennessee to file tariff language indicating that it would permit additional segmentation opportunities on its system as a result of any system expansion to the extent operationally feasible. Alternatively, East Tennessee was required to address in every section 7 filing to construct and operate why the proposal will not provide the operational capability necessary to provide segmentation.

4. In May 2003, the Commission granted rehearing of the January 2002 Order's requirement that East Tennessee immediately file tariff language providing for segmentation in the event of an expansion. Rather, the Commission required, pursuant to Natural Gas Act (NGA) section 5, that 120 days prior to the proposed in-service date of the Patriot project, East Tennessee file an explanation of whether the Patriot Project expansion would make segmentation feasible, and, if so, include *pro forma* tariff provisions providing for segmentation.[5] The Commission explained that the Patriot Project would create a major point of interconnection downstream of East Tennessee's Dixon Springs and Lewisburg compressor stations with Transco. The Commission noted that the new 24-inch diameter extension would ultimately provide up to 510,000 dekatherms (Dth) per day of firm natural gas service. The Commission pointed out that addition of this interconnection would seem to make segmentation feasible on the portion of East Tennessee's system downstream of the Dixon Springs and Lewisberg compressor stations. On December 15, 2003, East Tennessee filed a revised segmentation plan to comply with this aspect of the May 2003 Order.

5. The May 2003 Order also accepted, subject to various changes, East Tennessee's filing to comply with the requirements of the January 2002 Order concerning matters other than segmentation. On June 23, 2003, as supplemented on August 14, 2003, East Tennessee filed tariff sheets to comply with the requirements of the May 2003 Order not involving the Patriot Project. The February 2004 Order accepted certain of those tariff sheets to be effective March 1, 2004, rejected other tariff sheets, and directed East Tennessee to file revised tariff sheets. In addition, February 2004 Order granted and denied requests for rehearing or clarification of the

[5] A notice was issued on July 7, 2003 extending the time for submission of the filing to and including December 15, 2003.

May 2003 Order. On March 2, 2004, East Tennessee filed a request for clarification of the February 2004 Order.

Notice, Interventions, Protest, and Answers

6. The Commission issued notices of East Tennessee's December 15, 2003, and March 2, 2004 compliance filings. The East Tennessee Group (ETG) filed a protest to the December 15, 2003 compliance filing and requested a technical conference if the filing is not rejected. East Tennessee filed an answer to the protest and a request for technical conference (East Tennessee answer), and ETG filed an answer to East Tennessee's answer (ETG answer).[6] No comments or protests to the March 2, 2004 filing were filed. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. ' 385.214 (2004)), timely motions to intervene by NUI Energy Brokers, Inc., and Public Service Company of North Carolina, Inc., are granted. The untimely motion to intervene by NJR Energy Services Company is granted pursuant to the operation of Rule 214. Granting late intervention will not disrupt the proceeding or place additional burdens on existing parties.

Discussion

A. The December 15, 2003 Compliance Filing

The Instant Filing

7. On December 15, 2003, East Tennessee made a filing to comply with the May 2003 Order's requirements that it file an explanation of whether the Patriot Project expansion would make segmentation feasible, and, if so, include *pro forma* tariff provisions providing for segmentation. East Tennessee proposes to eliminate its current allowance of full segmentation on the western part of its system. Instead, East Tennessee proposes to offer segmentation throughout its system based on what it refers to as a "virtual" hub to be called the ETNG Hub. Under this proposal, shippers may divide their capacity into two types of segments: (1) a Supply Segment running from a primary or secondary receipt point to the ETNG Hub and (2) a Market Segment running from either the ETNG Hub or some other secondary receipt point to

[6] The Commission's Rules of Practice and Procedure do not permit answers to either protests or answers (18 C.F.R. § 385.213(a)(2) (2004)). However, the Commission finds good cause to admit both East Tennessee's answer to the protest and ETG's answer to that answer since it will not delay the proceeding, will assist the Commission in understanding the issues raised, and will ensure a complete record upon which the Commission may act.

a primary or secondary delivery point. The ETNG Hub would be treated as a secondary delivery or receipt point, depending on whether it is being used as part of a Supply or Market Segment.

8. East Tennessee would allow a shipper to submit multiple Supply Segment nominations under a single firm transportation contract, each up to the contract demand in that agreement. However, a shipper's Market Segment nominations under a contract would be capped at the contract demand under that agreement. In other words, East Tennessee's segmentation proposal would not permit a shipper engaging in segmented transactions to take delivery of gas at delivery points in excess of its overall transportation contract demand (with the exception of deliveries to the ETNG Hub).[7] East Tennessee also provides that it will confirm nominations for deliveries into and receipts out of the ETNG Hub so long as the related nominated receipts and deliveries are equal, and within the shipper's contractual entitlements. If the related nominated receipts and deliveries are not equal, East Tennessee will schedule the lesser of the two nominations.

9. As part of its proposal, East Tennessee also proposes to modify its scheduling priorities. Currently, East Tennessee schedules firm service in the following order: first, transactions using primary receipt or delivery points; second, pro rata among transactions using secondary receipt or delivery points within the shipper's contract path; and third, pro rata among transactions using secondary receipt or delivery points outside the contract path. East Tennessee proposes to eliminate the priority for within-the-path secondary nominations. Instead, it would use the following priorities in scheduling firm service: first, pro rata among transactions using a shipper's primary receipt or delivery points within the shipper's maximum daily receipt obligation (MDRO) at the relevant primary receipt point or its maximum daily delivery obligation (MDDO) at the relevant primary delivery point; second, pro rata among transactions using primary receipt or delivery points in excess of the relevant MDRO or MDDO but within the shipper's overall transportation contract demand and transactions using secondary points within contract demand; and third, pro rata among transactions using quantities not included in the first two categories. East Tennessee contends that it is eliminating the concept of "within the path" and "outside the path" nominations from its scheduling priorities due to its inability to path nominations on its system, as discussed below.

10. East Tennessee asserts that, in conjunction with the commencement of service on the Patriot Project expansion on November 21, 2003, hub segmentation on its system will create a liquid gas commodity trading market effectively linking five major interstate pipelines, as well as on-system storage and Appalachian production.

[7] Any excess deliveries would be treated as overrun service.

East Tennessee contends that its proposal is consistent with segmentation plans previously approved by the Commission.[8]

11. East Tennessee states that the Patriot Project expansion expands its existing facilities by the addition of looping and compression to an interconnection with Transco and provides a significant new supply/delivery point on the eastern side of its system. East Tennessee contends that physically linking the four major pipelines on the western side of its system and Transco on the eastern end, transforms its system from a market area pipeline into a market center pipeline that brings together the incremental markets served by those pipelines, Appalachian production, and the Saltville storage facility. East Tennessee asserts that this transformation has the potential to alter its operations significantly and that, as a market center, its throughput may be driven as much by the gas price differential between Transco and supplies feeding East Tennessee from the west as by traditional weather influences.

12. East Tennessee argues that linear segmentation remains operationally and contractually infeasible. East Tennessee asserts that, throughout this proceeding, it has presented substantial unrebutted evidence that operational or linear segmentation, as contemplated by Order No. 637, is not feasible on its system for reasons related to the operation of the system and to contractual arrangements. East Tennessee further asserts that, in light of these operational and contractual circumstances, the Commission approved segmentation limited to East Tennessee's system upstream of the Dixon Springs and Lewisburg compressor stations. East Tennessee asserts that its system continues to receive gas from a variety of sources on the western and eastern ends of the system, resulting in many loads being physically served by gas delivered into the system at a receipt point near the delivery point, even though the contractual primary receipt point is located some distance away. East Tennessee further asserts that this results in contractual paths that cross one or several null points. East Tennessee contends that the general system operating parameters, including the number of null points and multidirectional gas flows, the unique operating constraints at the LNG storage facility, and the reticulated nature of the pipeline system, prevents subdividing or segmenting the system into a series of linear contractual paths along which customers can utilize capacity.

13. East Tennessee further argues that the implementation of the Patriot Project does not change the fact that linear segmentation would still require modifications to East Tennessee's imbalance management services under Rate Schedules LMS-MA

[8] *Citing Dominion Transmission, Inc*., 95 FERC ¶ 61,316 (2001) (*Dominion*); *Gulf South Pipeline Company, LP*, 98 FERC ¶ 61,278 (2002), *order on reh'g*, l04 FERC ¶ 61,160 (2003) (*Gulf South*); and *Columbia Gas Transmission Corporation*, 100 FERC ¶ 61,084 (2002), *order on compliance filing*, 105 FERC ¶ 61,127 (2003) (*Columbia*).

(Load Management Service-Market Area) and LMS-PA (Load Management Service-Pooling Area). East Tennessee contends that the operational flexibility in these two Operational Balancing Agreements (OBA) services is predicated on a delivery system under which shippers may not take physical deliveries in excess of their overall transportation contract demand (Maximum Daily Transportation Quantity (MDTQ)) and that the aggregation of imbalances under LMS-MA and LMS-PA contracts is only practical when deliveries at a point may not exceed the MDTQ. East Tennessee argues that, under system-wide linear segmentation, these OBA agreements would allow a shipper to deliver its contractual MDTQ multiple times to a single point when deliveries are balanced. East Tennessee asserts that, under system-wide linear segmentation, the OBAs would not permit East Tennessee to verify whether a path overlapped in excess of the customer's MDTQ. East Tennessee further asserts that, to the extent segmentation permits backhauls and forwardhauls greater than the contract MDTQ to the same point, gas may move to a point to which it is not specifically nominated and, therefore, if a contract is segmented either as a forwardhaul or a backhaul, the OBA would prevent East Tennessee from monitoring overlapping MDTQs or accurately determining contract path usage. East Tennessee argues that, to the extent that overlapping MDTQs prevent East Tennessee from determining system constraints in advance, its system operations are impaired to the customer's detriment. East Tennessee contends that its proposal is in the public interest and provides all firm customers with the option to segment their capacity and affords the opportunity for smaller supply sources to link up with large markets.

<u>Protest and Answers</u>

14. In its protest, ETG contends that the Commission should reject the filing as an inadequate response that fails to comply with the May 2003 Order. ETG asserts that the status quo of limited segmentation is far preferable to the proposal for hub segmenting. ETG contends that East Tennessee's proposal offers no value to its members, representing the vast majority of firm shippers on East Tennessee, and is no substitute for the benefits of linear segmenting. ETG further contends that the proposal would rescind important benefits already available to East Tennessee shippers contrary to Order No. 637, including real segmentation at the upstream or western end of the system, forwardhauls and backhauls to the same point in excess of contract demand, and enhanced priority for secondary transportation "in the path."

15. ETG also argues that the Commission should find that the Patriot Project expansion does make increased segmenting feasible. ETG asserts that the expansion provides for significant new points of interconnection at which segmenting should be feasible and nothing in the December 15 filing adequately rebuts this fact. ETG asserts that the purported explanation contained in the filing is nothing more than a rehash of East Tennessee's pre-Patriot Project assertions that its system cannot accommodate segmentation. ETG further asserts that, even if the asserted null points

were a valid obstacle to segmentation, East Tennessee could, for example, allow segmentation from the west end of its 3100 Line through Knoxville, a stretch that includes no null points.[9] ETG contends that, if the Commission does not reject East Tennessee's December 15 filing, it should convene a technical conference to investigate the degree of increased segmentation that is operationally feasible. ETG asserts that the Commission should continue to monitor East Tennessee's operations to assure that the pipeline provides the maximum degree of segmentation that is operationally feasible at every stage as it implements the Patriot Project and other future expansions. ETG further asserts that East Tennessee is not a web or a net; rather, it is fundamentally linear and its physical characteristics are nothing like those of the other pipelines relied upon by East Tennessee.[10]

16. ETG argues that the Commission should reject East Tennessee's assertion that it is impossible to path gas shipped on its system. ETG asserts that East Tennessee has already implemented contract path priorities throughout its system and implemented linear segmentation at the western end. ETG further asserts that in several recent expansion filings, including the Patriot Project, East Tennessee described in detail exactly how gas would flow over new facilities to new shippers. ETG argues that East Tennessee claimed that it could demonstrate that certain shippers would not be responsible for any fuel or gas lost and unaccounted for due to the way their gas would flow and has demonstrated the ability to impose point-specific restrictions based on its knowledge of actual gas flows under particular weather conditions. ETG argues that, for these reasons, the Commission should also reject East Tennessee's assertion that its OBAs make it impossible to path shipper's gas flows. ETG contends that the pipeline has operated successfully for years with both the OBAs and recognition of pathing and the Commission has repeatedly held that Order No. 637 shall not be used as an excuse to reduce flexibility and take away existing services.

17. ETG argues that the Commission should also reject East Tennessee's effort to rescind the enhanced priority for secondary transportation "in the path." ETG asserts that long time distribution company shippers, such as its members, have invested in and paid for a contract path from their receipt points to their city gates and are entitled to priority within that path for transportation to and from secondary points, over shippers who have not paid for such a path. ETG further asserts that some more recent shippers, such as East Tennessee's affiliated power plant, have contracted for much shorter paths only, with the admitted intention of using outside-the-path secondary transportation for most of their supplies. ETG contends that East

[9] *Citing* Exhibit WEW-7 in the December 15 filing.

[10] *Citing* 100 FERC ¶ 61,084 at P 4, 41-46; 98 FERC ¶ 61,278 at 62,157, 62,164-65; and 95 FERC ¶ 61,316 at 62,078, 62,083.

Tennessee's proposal would put these new shippers on the same footing as its members, would significantly erode the ETG customers' access to secondary transportation, and is a transparent contrivance to benefit East Tennessee's affiliated shippers who did not contract for full use of the pipeline on a primary basis.

18. ETG argues that the affiliated DENA Murray power plant, which obtained service as part of the Murray Project, provides a particularly glaring example of the impacts of the current proposal to cancel "in the path" priority. ETG asserts that the affiliated power plant contracted for a primary path of only seven miles for about 75 percent of its volumes from a "valve section" point that is not a receipt point or an interconnection with anything, but rather just an arbitrary point on the mainline, to its delivery point.[11] ETG further asserts that when the Commission approved the Murray Project, in *East Tennessee Natural Gas Co.*, 97 FERC ¶ 61,032 at 61,155 (2001), it expressly recognized this odd condition and that DENA Murray had confirmed that it planned to use secondary transportation to receive the vast bulk of its gas supplies. ETG contends that the Commission rejected its concerns that this arrangement would result in a degradation of service to existing customers on the express understanding that DENA Murray's secondary service would be "outside the path" and, therefore, subordinate to ETG members' secondary service, which is predominately "in the path."[12]

19. ETG asserts that, as part of the "in the path" priority scheme, East Tennessee is permitting several western receipt points to be treated as one single "pooling" point for purposes of being in the shipper's contract path and that this is extremely useful to shippers having points in that area. ETG further asserts that East Tennessee has also informally agreed to provide for similar pooling of several points at the eastern end of its system. ETG contends that the December 15 filing would cancel the pooling at the western end of the system and also presumably withdraw the promised hope of an eastern pooling point. ETG also contends that the OBA scheme works well and provides a significant benefit to customers and Order No. 637 cannot be used as an excuse to reduce existing flexibility and withdraw existing services or to avoid other Commission-imposed obligations to increase service flexibility for its customers.

20. In its answer, East Tennessee contends that, despite the system changes, linear segmentation throughout the entire system remains infeasible. East Tennessee asserts that the Transco interconnect is a bi-directional meter, and under certain conditions, it will act as a supply point. East Tennessee further asserts that, in the December 15

[11] *Citing* Jan. 22, 2002 Letter Order in Docket No. RP97-13-006 and Nov. 13, 2001 Request for Clarification or, in the Alternative, Rehearing of the ETG in Docket No. CP01-80-000.

[12] *Citing* 97 FERC ¶ 61,032 at 61,156-58.

filing, it submitted testimony by Christopher T. Ditzel and William E. Wickman explaining that the East Tennessee system remains characterized by multidirectional flows and multiple null points. East Tennessee argues that it has engaged in a fresh analysis, specifically, the location of interconnections and the existence of multidirectional flows and multiple null points. East Tennessee asserts that its analysis shows that the system remains characterized by dispersed receipts and dispersed deliveries with as many as six null points that change locations depending on conditions. East Tennessee further asserts that the Transco interconnect, with its bi-directional meter, adds one more dispersed receipt point at the eastern end of the system. East Tennessee contends that, as a result of these characteristics, many loads are physically served by gas delivered into the system at a receipt point near the delivery point, even though the customer's scheduled receipt point is located some distance away across one or several null points. East Tennessee further contends that its contractual and tariff arrangements permit many customers to balance receipts and deliveries across multiple points and across multiple contracts throughout its system. East Tennessee argues that due to these operational, contractual, and tariff characteristics, the East Tennessee system operates as a reticulated system. East Tennessee contends that, due to the existence of multidirectional flows and multiple null points, its system cannot be divided into a series of linear contractual paths along which customers can utilize capacity, which is a necessary predicate to implementing linear segmentation. East Tennessee argues that, under similar circumstances, the Commission has determined that a pipeline may fulfill its obligation to provide segmentation to the maximum extent feasible by implementing hub segmentation.

21. East Tennessee asserts, in response to the assertion that it can path volumes, that ETG fails to understand the distinction among the design day gas flow as shown on the exhibits to East Tennessee's certificate applications and scheduled flows, and actual flows. East Tennessee further asserts that it charges for fuel and loss retention on an incremental basis based on the facilities required to provide incremental service and the fact that for a few shippers gas flows in a manner that does not require incremental fuel or loss retention charges does not mean that all or even a majority of East Tennessee's service agreements have contract paths.

22. East Tennessee also argues that hub segmentation will enhance flexibility afforded to shippers. East Tennessee asserts that, since the implementation of limited linear segmentation on November l, 2003, only a single shipper has segmented its transportation entitlements under a single contract. East Tennessee further asserts that, in contrast to the limited linear segmentation, under hub segmentation, shippers will have the ability to use all receipt and delivery points to deliver gas into or take gas from the ETNG Hub and shippers under the FT-GS and IT Rate Schedules will be able to obtain supply from the ETNG Hub. East Tennessee argues that, therefore, hub segmentation has the potential to benefit a far greater number of shippers under a far greater number of transactions than the current limited segmentation regime. East

Tennessee asserts that it cannot implement hub segmentation in conjunction with any form of linear segmentation. East Tennessee further asserts that, on balance, the incremental benefits of hub segmentation outweigh any perceived loss of benefits from the removal of limited linear segmentation and is consistent with the Commission's directives.

23. In its response, ETG states that, if East Tennessee is not able to provide additional linear segmenting, it would be far preferable to the customers to retain the current segmentation on the western end of its system and the "in the path" priority scheme and at least the possibility of additional real, linear segmenting on the East Tennessee system, as that system is expanded and modified in the future. ETG further asserts that East Tennessee should not be allowed to withdraw the existing OBA scheme, which works well and provides a significant benefit to customers. ETG contends that the core purpose of Order No.637 was to improve service to shippers, and the Commission has often admonished pipelines that it must not be used as an excuse to reduce or impair such service.

Commission Decision

24. The Commission has determined to reject East Tennessee's filing to modify its current tariff provisions concerning segmentation and within-the-path scheduling priority and to allow the current tariff provisions to remain in effect for at least another year. As described above, in the May 2003 Order, the Commission, pursuant to NGA Section 5, required East Tennessee to make a compliance filing explaining whether its Patriot Project expansion would make additional segmentation beyond that agreed to by East Tennessee in the settlement of its Order No. 637 proceeding feasible, and, if so, proposing *pro forma* tariff provisions providing for such additional segmentation.

25. East Tennessee seeks to eliminate the current segmentation requirement and to implement a new hub segmentation proposal on its entire system. However, no customer supports East Tennessee's new proposal. In fact, the only customers filing comments on East Tennessee's proposal oppose it and request that the current segmentation provisions be continued. East Tennessee's proposal would eliminate certain benefits it now provides to shippers. The existing tariff gives shippers the right to physical segmentation on the western end of East Tennessee's system where there are interconnections with three other pipelines. This means that, on that part of the system, firm capacity holders may subdivide their capacity into segments and use the segments simultaneously for different capacity transactions, consistent with the Commission's definition of segmentation.[13] Thus, the capacity holder may make

[13] Order No. 637-A, FERC Stats. & Regs. Regulations Preambles (July 1996-December 2000) ¶ 31,099 at 31,589 (Order No. 637-A).

physical deliveries at several different points on the western end of the system, each up to its contract demand, with the result that its overall physical deliveries exceed contract demand.[14] East Tennessee's revised plan would eliminate this right. In addition, East Tennessee's proposal would eliminate the current priority for secondary transactions within a shipper's contract path, as well as the tariff provisions permitting forwardhauls and backhauls to the same point in excess of contract demand. Elimination of the within-the-path priority would be inconsistent with Order No. 637-A which held that the within-the-path priority better promotes efficient allocation of capacity and improves competition as compared to pro rata allocation.[15] Also, the Commission relied on the fact that East Tennessee gives within-the-path transportation priority when it certificated the Murray Project. The Commission found that existing customers would not be harmed by the addition of an affiliated power plant, which contracted for a primary path of only seven miles, because the within-the-path priority meant that the existing shippers' secondary transactions would generally have priority over the secondary transactions of the affiliated power plant.[16] However, under East Tennessee's revised plan the existing firm customers would lose this priority.

26. In these circumstances, we have determined to exercise our discretion not to pursue further section 5 action at this time.[17] While the Commission is not satisfied that East Tennessee's proposal represents all the physical segmentation that is operationally feasible on its system, particularly since East Tennessee currently allows physical segmentation on the western end of its system, the Commission recognizes East Tennessee's operational complexity. Based on the current record it is not clear what improvements to East Tennessee's existing segmentation plans could, or should, be ordered under NGA section 5. Further, East Tennessee itself asserts that that the Patriot Project expansion has the potential to alter its operations significantly. Therefore, given the customers' preference for continuing the current segmentation system, we believe that it is appropriate to defer action until East Tennessee gains further experience with its operations following the Patriot Project expansion. The experience obtained from operation with the Patriot Project expansion until one year from the issuance date of this order will provide the knowledge necessary for the parties and the Commission to determine whether additional segmentation provisions are warranted on East Tennessee's system, and if so what these provisions are. Accordingly, East Tennessee's December 15, 2003 compliance filing will be rejected.

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[14] 101 FERC ¶ 61,127 at P 52.

[15] Order No.637-A at 31,598.

[16] 97 FERC ¶ 61,032 at 61,157.

[17] *General Motors Corp. v. FERC*, 613 F. 2d 939, 944 (D.C. Cir. 1979).

27. Therefore, East Tennessee is directed to file a report within one year of the date this order issues explaining with adequate support whether the Patriot Project expansion makes physical segmentation feasible on the portion of East Tennessee's system downstream of the Dixon Springs and Lewisburg compressor stations fully reflecting the existing physical segmentation on its system, and, if so, proposing *pro forma* tariff provisions providing for physical segmentation. The report must include: (1) for the annual period ending August 31, 2005, (a) system maps and a flow diagram indicating (i) peak day and average day gas flows, (ii) actual peak day and average day receipts and deliveries at each receipt and delivery point, and (iii) the location of any null points, and (b) a detailed description specifying (i) any days of the annual period on which null points occur on East Tennessee's system and (ii) the location of the null points occurring on such days; and (2) current steady-state and transient computer simulation input and output files on CD-Rom, including average daily, design day, and peak day flow scenarios of the entire pipeline system with a computer graphic representation of the pipeline. Accordingly, the requests for a technical conference are denied.

B. <u>The March 2, 2004 Compliance Filing and the Request for Clarification or Rehearing</u>

28. In its March 2, 2004 filing, East Tennessee states that in compliance with the February 2004 Order, it is modifying section 15.3 of the GT&C to include a phrase that was inadvertently omitted from the unmarked tariff sheet submitted on June 23, 2003, in these proceedings. East Tennessee further states that it is modifying section 8.4 of Rate Schedule LMS-MA to (i) eliminate the offsetting of charges and credits related to the Transportation Trade Component to be calculated for traded quantities and (ii) clarify that the Transportation Trade Component proposed for LMS-MA transactions does not include charges for transportation service on the Tennessee Gas Pipeline Company system. East Tennessee submits that the Commission, in the February 2004 Order, conditioned its acceptance of certain tariff sheets on East Tennessee modifying those tariff sheets to reflect revisions accepted by the Commission in East Tennessee's Order No. 587-0 and Order No. 587-R proceedings. East Tennessee asserts that the tariff sheets previously filed by East Tennessee already reflect such revisions with the one exception of Sheet No. 176, and it is submitting Second Sub Ninth Revised Sheet No. 176 to reflect modifications approved in East Tennessee's Order No. 587-R proceeding. East Tennessee notes that several tariff sheets were rejected as moot because subsequent and more complete tariff sheets were accepted by the February 2004 Order, and it is resubmitting certain of the subsequent tariff sheets solely to reflect the correct superseding sheet number information.

29. East Tennessee asserts, in its March 2, 2004 filing and the request for clarification or rehearing, that, in the May 2003 Order and June 18, 2003 Notice of Extension of Time in these proceedings, the Commission permitted East Tennessee to

implement its Phase I revised tariff sheets effective September 1, 2003, and its Phase II revised tariff sheets effective November 3, 2003. East Tennessee states that, accordingly, in its March 2, 2004 filing, the designated effective dates for the revised tariff sheets are September 1, 2003, for Second Sub Fifth Revised Sheet No. 52C and Second Sub Ninth Revised Sheet No. 176, and November 3, 2003, for Second Sub Eighth Revised Sheet No. 9, Second Sub Fourth Revised Sheet No. 129B, and Second Sub Fourth Revised Sheet No. 130, respectively. In the February 2004 Order, the Commission conditionally accepted certain revised tariff sheets to be effective March 1, 2004. East Tennessee asserts that clarification of the February 2004 Order is necessary because East Tennessee implemented the revised tariff sheets in reliance on the effective dates in the May 2003 Order and the related June 18, 2003 Notice of Extension. East Tennessee requests clarification that these revised tariff sheets which were implemented are effective on September 1, 2003, and November 3, 2003.

30. The proposed revised tariff sheets filed in these proceedings on March 2, 2004 are accepted, subject to the conditions of this order, to be effective as proposed as in compliance with the February 2004 Order. In addition, based upon East Tennessee's explanation, the Commission grants the requested clarification of the February 2004 Order, that the revised tariff sheets listed in Appendices A and B to this order be effective on September 1, 2003, and November 3, 2003, respectively, as ordered below.

<u>The Commission orders</u>:

(A) Second Sub Fifth Revised Sheet No. 52C and Second Sub Ninth Revised Sheet No. 176 are accepted to be effective on September 1, 2003, and Second Sub Eighth Revised Sheet No. 9, Second Sub Fourth Revised Sheet No. 129B, and Second Sub Fourth Revised Sheet No. 130 are accepted to be effective on November 3, 2003, subject to the conditions of this order as in compliance with the February 2004 Order, as discussed in the body of this order.

(B) The Commission grants the requested clarification of the February 2004 Order, to specify that the revised tariff sheets listed in Appendices A and B to this order be effective on September 1, 2003, and November 3, 2003, as indicated in those appendices subject to the conditions of this order, as discussed in the body of this order.

(C) East Tennessee's December 15, 2003 filing in these proceedings is rejected.

(D) East Tennessee is directed, within one year of the date this order issues, to file a report explaining with adequate support whether the Patriot Project expansion makes physical segmentation feasible on the portion of East Tennessee's system downstream of the Dixon Springs and Lewisburg compressor stations fully reflecting the existing physical segmentation on its system, and, if so, proposing *pro forma* tariff provisions providing for physical segmentation and include in such filing: (1) for the annual period ending August 31, 2005, (a) system maps and a flow diagram indicating (i) peak day and average day gas flows, (ii) actual peak day and average day receipts and deliveries at each receipt and delivery point, and (iii) the location of any null points, and (b) a detailed description specifying (i) any days of the annual period on which null points occur on East Tennessee's system and (ii) the location of the null points occurring on such days; and (2) current steady-state and transient computer simulation input and output files on CD-Rom, including average daily, design day, and peak day flow scenarios of the entire pipeline system with a computer graphic representation of the pipeline, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix A

East Tennessee Natural Gas Company

Second Revised Volume No. 1
Tariff Sheets Accepted Effective September 1, 2003

Sub Sixth Revised Sheet No. 1
Sub First Revised Sheet No. 2
Sub Third Revised Sheet No. 4A
Sub Fourth Revised Sheet No. 33
Sub Seventh Revised Sheet No. 52
Sub Eighth Revised Sheet No. 52A
Sub Second Revised Sheet No. 52B
Sub Seventh Revised Sheet No. 54
Sub Second Revised Sheet No. 54B
Sub Fifth Revised Sheet No. 55
Sub First Revised Sheet No. 55A
Sub Eighth Revised Sheet No. 61
Sub First Revised Sheet No. 62A
Sub Eighth Revised Sheet No. 63
Sub Third Revised Sheet No. 64
Sub Original Sheet No. 68
Sub Original Sheet No. 69
Sub Original Sheet No. 70
Sub Original Sheet No. 71
Sub Original Sheet No. 72
Sub Original Sheet No. 73
Sub Original Sheet No. 74
Sub Original Sheet No. 75
Sheet Nos. 76-99
Sub Seventh Revised Sheet No. 101
Sub Sixth Revised Sheet No. 103
Sub Eighth Revised Sheet No. 105
Sub First Revised Sheet No. 105A
Sub First Revised Sheet No. 112
Sub Third Revised Sheet No. 113
Sub Fifth Revised Sheet No. 123
Sub Fifth Revised Sheet No. 124
Sub Second Revised Sheet No. 125
Sub Third Revised Sheet No. 126
Sub Eighth Revised Sheet No. 127
Sub Fifth Revised Sheet No. 129A
Sub Fifth Revised Sheet No. 132
Sub Fourth Revised Sheet No. 134
Sub Sixth Revised Sheet No. 139
Sub Fifth Revised Sheet No. 140
Sub Third Revised Sheet No. 144
Sub Fourth Revised Sheet No. 167
Sub Fifth Revised Sheet No. 168
First Revised Sheet No. 175A
Sub Original Sheet No. 176A
Sub Original Sheet No. 177A
Sub Original Sheet No. 177B
Sub Original Sheet No. 177C
Sub Original Sheet No. 177D
Sub Original Sheet No. 177E
Sub Original Sheet No. 177F
Sub Original Sheet No. 177G
Sub Second Revised Sheet No. 205
Sub First Revised Sheet No. 207
Sub Second Revised Sheet No. 208
Sub First Revised Sheet No. 214
Sub Third Revised Sheet No. 216
Sub Third Revised Sheet No. 217
Sub Second Revised Sheet No. 223
Sub Third Revised Sheet No. 224
Sub Second Revised Sheet No. 225
Sub Second Revised Sheet No. 230
Sub Second Revised Sheet No. 231
Sub Third Revised Sheet No. 232
Sub First Revised Sheet No. 233
Sub First Revised Sheet No. 234
Sub Second Revised Sheet No. 235
Sheet Nos. 236-237
Sub Second Revised Sheet No. 273

Appendix B

East Tennessee Natural Gas Company

Second Revised Volume No. 1
Tariff Sheets Accepted Effective November 3, 2003

Sub First Revised Sheet No. 8
Sub Original Sheet No. 9A
Sub Fifth Revised Sheet No. 10
Sub Original Sheet No. 13A
Sheet Nos. 14-16
Sub First Revised Sheet No. 19
Sub Fifth Revised Sheet No. 20
Sub Fifth Revised Sheet No. 131
Sub Fourth Revised Sheet No. 147